IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 399 OF 1988

The State of Maharashtra ... Appellant.

vs.

1. Chandrashekhar Rudrappa Bauchakar
   age 19 years, r/o. Sambavade,
   Tahsil Shahuwadi, Dist. Kolhapur.

2. Ashok Kerba Vatale, age 29 years,
   r/o. Bambavade, Tehsil, Shahuwade,
   District Kolhapur,

3. Pandit Rangrao Nikam, age 21 years,
   r/o. Tehsil, Shahuwade,
   District Kolhapur. ... Respondents

Mrs. P.H. Kantharia for Appellants
Mr. S. P. Kadam for Respondent nos. 2 & 3.
Respondent no. 1 has expired.

CORAM: B.H. MARLAPALLE
&
SMT. R.S. DALVI JJ.

DATE:25 /1/2006

ORAL JUDGMENT : [Per SMT. R.S. DALVI J]

1. The State of Maharashtra has filed this appeal against the order of acquittal passed by the learned Sessions Judge, Kolhapur, in Sessions Case No. 105 of 1986 vide judgment

and order dated 31.12.1986, acquitting all the three Respondents herein (the accused therein) of the offence under punishable under Section 302 read with 34 of the Indian Penal Code, (IPC.). Respondent no.1 has expired. The appeal survives against respondents 2 and 3.

2. The case of the prosecution is that on 6.7.1986 at about 6 p.m., the Respondents, in furtherance of their common intention, committed murder of one Anant Nana Sutar, in front of Anand Hotel at Bambavade. The prosecution sought to bring out certain disputes between the deceased and the Respondents, consequent upon which their relations were strained, to show the motive on the part of the accused to commit the murder of the deceased.

3. The FIR was lodged by the cousin of the deceased one Hari Sutar (who has been examined as PW. 4) at Shahuwadi Police Station.

4. The prosecution has examined as many as 15 witnesses. The case of the prosecution rested upon three eye-witnesses. Almost the entire oral depositions on behalf of the prosecution through a number of witnesses have resulted in no case being brought out since most of the witnesses have turned hostile.

5. The deceased was admittedly in a bullock cart. He was drunk. He was in a sleeping condition. He had sustained many injuries. PW 4, the complainant, who saw the deceased in that condition was frightened and shocked and he therefore ran to inform the other relations and thereafter lodged the complaint.

6. It will be material to examine the evidence lead by PW.4, the star witness of the prosecution. He had held his ground on the eye- witness account. Para 4 of his evidence shows that Respondent no.1 was possessing the axe, Respondent no.3 was having a sword like weapon, with both side edges and Respondent no.2 was having a sword. They started assaulting the deceased. They assaulted the deceased on the head, stomach, waist, thigh and legs. whilst the deceased was in the bullock cart. The deceased was shouting. P.W. 4 himself was frightened and started running towards the field where one Bahirao and Tanaji had gone for collecting fodder. When he returned with the other two persons he saw the bullock cart in front of the country liquor shop at Bambavade. The deceased was lying injured in the bullock cart. He was unconscious and thought to be dead.

7. His cross examination shows that the deceased was a wrestler and was prosecuted in several other offences earlier. One of them was when the deceased fired a bullet on a butcher in Ichalkaranji. The deceased was sentenced to rigorous imprisonment for 7 years. While he was in Ichalkaranji jail one Chandrappa Bandgar had killed the paternal aunt of the deceased. Hence the deceased allegedly committed the murder of Chandrappa Bandgar after his release from prison but he was acquitted in that case. He was prosecuted in another case of assaulting and was concerned in certain chapter proceedings also.

8. His evidence further shows that there were several hotels in the locality in Bambavade, where the deceased's bullock-cart had ultimately come to a halt. He had gone with the deceased on that day because he was asked to go by the deceased. His cross examination reveals that when he was near Anand Hotel he saw the three Respondents coming towards the deceased and his bullock cart with weapons but he did not mention that fact to anyone in Anand Hotel.

9. The cross examination further reveals that he did not shout for alarming the deceased when the deceased was heavy with liquor and when the Respondents were approaching the bullock cart with weapons. He has in fact deposed that he was frightened and hence he ran away.

10. His deposition has to be seen alongside of the FIR signed and identified by him. The FIR shows that PW. 4 was going towards the hotel when the deceased drove the cart and halted it. It further shows that Respondent no.1 came running with an axe in his hand and Respondent nos. 2 and 3 were unarmed. They started to pull the legs of the deceased. That aspect is materially contradicted by him in his deposition. His deposition shows separate weapons possessed and used by the three Respondents. That case is therefore distinctly an improvement in para 4 of the deposition. Further the said paragraph shows that all the Respondents started assaulting the deceased on various parts of his body. The FIR instead shows the assaults committed by only Respondent no.1 and Respondent nos. 2 and 3 pulling and beating the deceased.

11. Further when he returned along with the two persons Bajirao and Tanaji he saw the deceased smeared with blood in the bullock cart. Whereas the said two names are not mentioned in the FIR., the fact about the deceased lying smeared with blood and injuries on his back etc., had not been mentioned in his deposition.

12. It can therefore be seen that there are certain material contradictions and omissions in the statement of the star witness who has held his ground.

13. Since there is a discrepancy in the weapons held and used by the Respondents, as can be seen from his deposition and his previous statements contained in the FIR. Since it is seen that the swords which the Respondent nos. 2 and 3 were stated to be carrying and which were stated to have been used are not even mentioned in the FIR, the back-bone of the prosecution case collapses.

14. The other witnesses, including those stated to be eye – witnesses have all turned hostile. It is thus unnecessary to to go through their evidence. The learned APP Mrs.

Kantharia has fairly conceded this fact.

15. The medical evidence contained in post- mortem examination report (Exhibit 29) as deposed by the Medical officer, P.W. 5 setting out the various injuries shows that the death to be homicidal. However, the aforesaid evidence cannot show culpability of the accused nos. 2 and 3.

16. It therefore follows that the appeal has no substance. The appeal is accordingly dismissed.

(SMT. R.S. DALVI J.) (B.H. MARLAPALLE J.)